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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/802,897	03/17/2004	Todd L. DePue	1-74557	4617
27377	7590	04/11/2006	EXAMINER	
MACMILLAN, SOBANSKI & TODD, LLC ONE MARITIME PLAZA-FOURTH FLOOR 720 WATER STREET TOLEDO, OH 43604			STERLING, AMY JO	
			ART UNIT	PAPER NUMBER
			3632	

DATE MAILED: 04/11/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/802,897

Applicant(s)

DEPUE ET AL.

Examiner

Amy J. Sterling

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 02 February 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 21-40 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 21-40 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 17 March 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____

- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

This is the **Final Office Action** for application number 10/802,897 Cup Holder with Sensor, filed on 3/17/04. Claims 21-40 are pending. This **Final Office Action** is in response to applicant's reply dated 2/2/06. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Applicant's amendment necessitated any new ground(s) of rejection presented in this Office action.

Election/Restrictions

Claim 40 is withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected Species (figure 5). The sensor being positioned within the support surface is clearly shown in Figure 5, which belongs to a non-elected species and the claim is considered withdrawn.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 37-39 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 37 recites that "said support surface defines a substantially upwardly facing first surface of a support member....said support member further including a substantially downwardly facing second surface opposite said support surface" and it is

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unclear how the second support surface can be opposite the "support surface" when the "support surface" contains both "first and second surfaces".

Claim 39 is also indefinite because it is unclear how the "support surface" which contains "first and second opposite surfaces" can have the second surface be between the "support surface".

Claim Rejections - 35 USC § 102

Claims 21-23, 25, 28 and 37 are rejected under 35 U.S.C. 102(b) as being anticipated by United States Patent No. 6230948 to Steiger et al.

Steiger et al. teaches a body (1) including a generally horizontal support surface (4) which has a substantially upwardly facing first surface of a support member and the support member further includes a substantially downwardly facing second surface opposite the support surface, an optical sensor (20, infrared sensor used optics to sense presence of the article) supported and positioned relative to and within the body opposite the support surface, a support member (5) supported on the body which has pivoting movement about an axis that extends generally vertically, an actuator (10) that is responsive to the sensor.

Claims 21, 37-39 are rejected under 35 U.S.C. 102(b) as being anticipated by United States Patent No. 5601269 to Jankovic.

Jankovic discloses a holder for supporting an article having a body (10) including a support surface (31) having a substantially upwardly facing first surface of a support

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member of the body and a substantially downwardly facing second surface opposite the support surface, the support surface adapted to support the article thereon, a sensor (86) supported on the support surface and positioned adjacent to the second surface and relative to the body opposite the support surface such that the second surface is between the support surface and the sensor, and a support member (28) supported on the body (10) for movement relative thereto and an actuator (56) that is responsive to the sensor signal for moving the support member into engagement with an article supported on the support surface.

Claim Rejections - 35 USC § 103

Claims 24, 26, 33 and 35 are rejected under 35 U.S.C. 103(a) as being unpatentable over United States Patent No. 6230948 to Steiger et al. as applied to claim 21 above and further in view of United States Patent No. 5103279 to Gutteridge.

Steiger et al. discloses the basic inventive concept with the exception that it does not specifically teach that the sensor is a field effect device. Also, the sensor in Steiger et al. senses the presence of the article, but does not specifically define that the presence includes a diameter, a height, a width, a perimeter, or the weight of the article.

Gutteridge discloses a field effect sensor which is used to sense pressure (See Col. 1 lines 6-9). Therefore it would have been obvious to one having ordinary skill in the art at the time the invention was made from the teachings of Gutteridge to have used a field effect sensor for the pressure sensor application, in order to accurately sense an input of pressure.

Claims 27, 29-32, 34 and 36 are rejected under 35 U.S.C. 103(a) as being unpatentable over United States Patent No. 6230948 to Steiger et al. as applied to claim 21 above and further in view of United States Patent Publication No. 2003/006258 to Leopold et al.

Steiger et al. discloses the basic inventive concept as shown above with the exception that it does not teach wherein the support member movement is pivoting about a generally horizontal axis.

Leopold et al. teaches a device for supporting an article in which has a horizontal support surface and support members (26) which pivot about a generally horizontal axis, used to support the article in the desired location. Therefore it would have been obvious to one having ordinary skill in the art at the time the invention was made from the teachings of Leopold et al. to have made the support members pivot about a generally horizontal axis, in order to support the article in a desired location.

Claims 33 and 35 are rejected under 35 U.S.C. 103(a) as being unpatentable over United States Patent No. 6230948 to Steiger et al. and in view of United States Patent Publication No. 2003/006258 to Leopold et al. as applied to claim 29 above and further in view of United States Patent No. 5103279 to Gutteridge.

Steiger et al. discloses the basic inventive concept as shown above with the exception that it does not teach wherein the support member movement is pivoting about a generally horizontal axis.

Leopold et al. teaches a device for supporting an article in which has a horizontal support surface and support members (26) which pivot about a generally horizontal axis, used to support the article in the desired location. Therefore it would have been obvious to one having ordinary skill in the art at the time the invention was made from the teachings of Leopold et al. to have made the support members pivot about a generally horizontal axis, in order to support the article in a desired location.

Steiger et al. and Leopold et al. disclose the basic inventive concept with the exception that they do not specifically teach that the sensor is a field effect device. Also, the sensor in Steiger et al. senses the presence of the article, but does not specifically define that the presence includes a diameter, a height, a width, a perimeter, or the weight of the article.

Gutteridge discloses a field effect sensor which is used to sense pressure (See Col. 1 lines 6-9). Therefore it would have been obvious to one having ordinary skill in the art at the time the invention was made from the teachings of Gutteridge to have used a field effect sensor for the pressure sensor application, in order to accurately sense an input of pressure.

Response to Arguments

The applicant has argued that the term "opposite" must be interpreted to mean below the body. This is unpersuasive in that the term "opposite" is being argued with a narrow interpretation that is not indicated by the claims.

In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, it is clear that the arms enclose the desired receptacle and whether the arms are mounted on a vertical or horizontal axis are interchangeable and functional equivalents. The arm axis are each chosen for supporting the receptacle in the manner desired, a motivation which was well known in the art at the time of the invention.

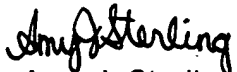
Conclusion

THIS ACTION IS MADE FINAL. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

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the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action. Any inquiry concerning this communication should be directed to Amy J. Sterling at telephone number 571-272-6823. The examiner can normally be reached (M-F 8 a.m.-5:00 p.m.). If attempts to reach the examiner are unsuccessful, the examiner's supervisor, Robert Olszewski can be reached at 571-272-6788. The fax machine number for the Technology center is 571-273-8300 (formal amendments) or 571-273-6823 (informal amendments and communications). Any inquiry of a general nature or relating to the status of this application should be directed to the Technology Center receptionist at 571-272-3600.


Amy J. Sterling
4/8/06